

SERVICE DATE – APRIL 7, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42141

NATIONAL RAILROAD PASSENGER CORPORATION—INVESTIGATION OF
SUBSTANDARD PERFORMANCE OF THE CAPITOL LIMITED

Digest:¹ This decision directs the parties to engage in mediation relating to Amtrak's request that the Board initiate an investigation of alleged substandard performance of service on the lines of CSX Transportation, Inc., and Norfolk Southern Railway Company, between Chicago, Ill., and Washington, D.C.

Decided: April 1, 2015

On November 17, 2014, the National Railroad Passenger Corporation (Amtrak) filed a complaint pursuant to 49 U.S.C. § 24308(f), requesting that the Board initiate an investigation of alleged substandard performance of Amtrak's Capitol Limited service between Chicago, Ill., and Washington, D.C.² Amtrak alleges in its complaint that the on-time performance of the Capitol Limited service, which operates over tracks of CSX Transportation, Inc. (CSXT) and Norfolk Southern Railway Company (NSR), has averaged less than 80 percent for two consecutive calendar quarters.

On January 7, 2015, CSXT and NSR each filed a response to Amtrak's complaint.³ In their responses, both CSXT and NSR request that the Board refer the parties to mediation.⁴ NSR also requests that the Board hold the proceeding in abeyance for 120 days to enable the parties to pursue mediation.⁵ Amtrak filed a motion for leave to file a reply to CSXT's and NSR's responses on January 28, 2015. In its reply, Amtrak opposes the requests for mediation, arguing that mediation would not be productive because it has already participated in discussions with

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² On November 19, 2014, Amtrak filed an amended complaint, which revised the endpoint on-time performance figure for the third quarter of fiscal year 2014.

³ CSXT and NSR also each filed a motion to dismiss Amtrak's complaint on January 7, 2015, and Amtrak replied to each motion to dismiss on January 27, 2015. The motions to dismiss and any other outstanding requests will be addressed in a subsequent decision.

⁴ CSXT Response 4-6; NSR Response 31-33.

⁵ NSR Response 32.

both CSXT and NSR, yet the Capitol Limited on-time performance remains substandard.⁶ Additionally, Amtrak opposes NSR's request that mediation be conducted separately between Amtrak and each host carrier.⁷ On January 30, 2015, NSR filed a reply to Amtrak's motion for leave to file a reply to CSXT's and NSR's responses, stating that, while it does not oppose the acceptance of Amtrak's reply, it finds Amtrak's objections to mediation insubstantial.⁸

As noted by the parties, the Board favors the resolution of disputes through the use of mediation, in lieu of formal Board proceedings, whenever possible. 49 C.F.R. § 1109.1. Although Amtrak states that it opposes mediation, it has not provided a convincing argument for why mediation could not be useful here. Therefore, the requests for Board-supervised mediation will be granted. The issue of whether the mediation will be conducted separately between Amtrak and each host carrier can be addressed within the context of the mediation.

The mediation shall be conducted pursuant to the procedures set forth in § 1109.3. The mediation period shall be 30 days, beginning on the date of the first mediation session. § 1109.3(b). The Board may extend mediation for additional periods of time not to exceed 30 days per period, pursuant to mutual written requests of all parties to the mediation proceeding. Id.

The Board's Acting Chairman will appoint a mediator no later than five business days after service date of this decision.⁹ Once appointed, the mediator will contact the parties to discuss ground rules and the time and location of any meetings. At least one principal of each party, who has authority to bind that party, shall participate in the mediation and be present at any session at which the mediator requests that the principal be present. § 1109.3(c). The mediator will inform the Board when mediation has ended, with or without a resolution. § 1109.3(b).

Under § 1109.3(e), where at least one party to the mediation does not voluntarily consent to mediation, the Board will not hold the underlying proceeding in abeyance and statutory deadlines will not be tolled. Because Amtrak has not voluntarily consented to mediation here, the proceeding will not be held in abeyance at this time.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

⁶ Amtrak Reply 6-8.

⁷ Id. at 7; see NSR Response 33 n.31.

⁸ Replies to replies, such as Amtrak's January 28, 2015 pleading and NSR's January 30, 2015 pleading, are not permitted under 49 C.F.R. § 1104.13(c). However, in the interest of developing a full record, and because there have been no objections, we will accept these filings into the record.

⁹ Alternatively, the parties may agree to use a non-Board-supervised mediator if they inform the Board within 10 days of the effective date of this decision. § 1109.3(a).

It is ordered:

1. Amtrak's motion for leave to file a reply to CSXT's and NSR's responses is granted. Amtrak's reply and NSR's reply to Amtrak's motion are accepted into the record.
2. The parties are directed to engage in mediation.
3. The Board's Acting Chairman will appoint a mediator no later than five business days after service of this decision.
4. This decision is effective on its service date.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.